

City of Monroe



Office of Mayor

ORIGINAL

C. D. CAPPUCCILLI, MAYOR

OCT 18 2 48 PM '99

October 12, 1999

OFFICE OF THE CLERK

Mr. William Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

EX PARTE OR LATE FILED

*Ex Parte Filing in cases WT 99-217; CC96-98*

Dear Chairman Kennard:

The City Council and I urge you to not adopt the rule proposed in these cases. It is our understanding that in some states 70 or more new phone companies have been certified to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof – all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights – a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt. Building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type. If antennas are too heavy or too high, roofs may collapse or if not properly secured, they may blow over and damage the building, its inhabitants or passers-by.

Similarly our zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of the City of Monroe. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns – which we do every day, with success. The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for over 160 years. Zoning has not unnecessarily hindered technology or the development of our economy, nor will it. There is simply no

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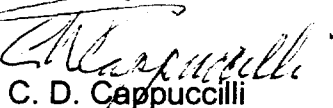
basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

Local management of our rights-of-way is essential to protect the public health, safety and welfare of our citizens as well as the other issues of the right-of-way. Congress has specifically prohibited the FCC from acting in this area. We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this issue. With 38,000 municipalities nationwide and thousands of phone companies a dozen or so cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Sincerely,



C. D. Cappuccilli  
Mayor

cc: Commissioner Harold Furchtgott-Roth, FCC  
Commissioner Susan Ness, FCC  
Commissioner Michael Powell, FCC  
Commissioner Gloria Tristani, FCC  
Ms. Magalie Roman Salas, FCC  
Mr. Jeffrey Steinberg, FCC  
Mr. Joel Tauenblatt, FCC  
Mr. Robert Fogel, National Assoc. of Counties  
International Transcription Services  
Mr. Kevin McCarty, U.S. Conference of Mayors  
Ms. Elizabeth Beaty, NATOA  
Ms. Barrie Tabin, NLC  
Mr. Thomas Frost, BOCA International  
Congressman John D. Dingell  
Senator Carl Levin  
Senator Spencer Abraham  
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# CITY OF MONROE

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FEDERAL COMMUNICATIONS COMMISSION

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